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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,144	10/06/2003	Franck Giroud	05725.1250-00	1095

22852 7590 01/18/2008
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EXAMINER	
MERCIER, MELISSA S	
ART UNIT	**PAPER NUMBER**
1615	
MAIL DATE	**DELIVERY MODE**
01/18/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

Office Action Summary	Application No.	Applicant(s)
	10/678,144	GIROUD, FRANCK
	Examiner	**Art Unit**
	Melissa S. Mercier	1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 06 November 2007.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) 10-12,17 and 18 is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-9 and 13-16 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10-6-03, 1-31-06.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Change of Examiner

The examiner assigned to the instant application has changed. The new examiner is Melissa Mercier. Contact information is provided at the end of this Office Action.

Election/Restrictions

Applicant's election with traverse of Group I, claims 1-16 and further election of a specific polymer: copolymers based on styrene and C_1-C_4 methacrylates and the technique of using at least one cationic initiator in the reply filed on November 6, 2007 is acknowledged. The traversal is on the ground(s) that searching both groups and all claimed species does not present a search burden to the examiner. This is not found persuasive because there would be a serious search and examination burden if restriction were not required because one or more of the following reasons apply:

(a) the inventions have acquired a separate status in the art in view of their different classification;

(b) the inventions have acquired a separate status in the art due to their recognized divergent subject matter;

(c) the inventions require a different field of search (for example, searching different classes/subclasses or electronic resources, or employing different search queries);

(d) the prior art applicable to one invention would not likely be applicable to another invention;

(e) the inventions are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

The requirement is still deemed proper and is therefore made FINAL.

The examiner has withdrawn the election of species requirement regarding the technique for introduction of charged particles.

Claims 1-9 and 13-16 are being prosecuted in this application. Claims 10-12 and 17-18 are withdrawn from consideration.

Priority

Applicant's claim of priority to US Provisional Application 60/434,660 filed on December 20, 2002 is acknowledged.

Information Disclosure Statement

Receipt of the Information Disclosure Statements filed on October 6, 2003 and January 31, 2006 is acknowledged.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-9 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Young et al. (WO 97/09031) in view of Daniels et al. (Polymer Latexes: Preparation, Characterization, and Application)

Young discloses a hair shampoo composition comprising latex polymer particles, water soluble cationic polymer as a latex deposition aid, organic oil as a latex deposition aid and typically one or more surfactants, in an aqueous carrier with one or more optional ingredients (abstract). The latex polymer systems are dispersions of water insoluble particles in a continuous aqueous medium. The particles may be maintained as dispersed particles primarily by surfactant and to some extent by inherent dispersion characteristics of colloidal particles in such compositions. The dispersed particles will generally have an average diameter of less than about 4um, preferably from about 0.005 to about 1um (page 13, lines 28-35). The composition comprises up to about 25% of the particles (page 13, lines 22-27). Monomers suitable for use in the polymerization or copolymerization methods include styrene, butadiene, ethylene, acrylonitrile, chloroprene, vinylidene chloride, isoprene, isobutylene, and vinyl chloride, and esters of acylic, methacrylic, vinylacetaic, maleic, crotonic, and itaconic acids. The monomers may be used alone or in combination, or they may be mixed with one or more ionic monomers, for example acrylic acid, methacrylic acid, to form charged latex polymer systems (page 14, lines 6-13). Cationic surfactants can be used by are generally not preferred (page 5, lines 22-24). A water soluble cationic polymer may also be used to enhance deposition of the latex polymer particles. Suitable cationic polymers will typically have cationic nitrogen-containing moieties such as quaternary ammonium or cationic amino moieties or a mixture thereof (page 8, lines 7-20). Since dodecyltrimethylammonium bromide is a quaternary ammonium, it is the position of the examiner that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have selected a specific ammonium compound based on the functionality desired. Young further discloses the charge density be above about 2 meq/gram at the pH of intended use which will in general be from about pH 3 to about pH 9 (page 8, lines 28-30).

Young does not disclose the glass transition temperature of the polymer particles, however, it is the position of the examiner that the glass transition temperature is an inherent property of the polymer; a polymer can not be separate from its properties. Therefore based on the disclosure of Young a person of ordinary in the art to select a polymer based on the particular properties desired in order to make a hair care composition with specific parameters and functions.

Young does not disclose the zeta potential of the compositions disclosed the technique of using at least one cationic initiator. .

Daniels discloses latexes made via two consecutive emulsion polymerization states are parameters include the particle surface polarity, the relative phase volumes, and the core particle size. The parameters affecting the kinetics of the kinetics of the morphological development include the mode of monomer addition and the use of cross linking agents (page 237, 3rd paragraph). Daniels further discloses the latexes can be formed with the use of ionic initiators (page 239, 4th paragraph). It is further disclosed that eliminating covalently bound ionic groups from the polymer can greatly reduce the core particle surface polarity and make the core shell structure more favorable thermodymnically (page 239, 5th paragraph). It would have been obvious to a person of ordinary skill in the art to select the initiator type, either cationic or anionic based the on the characteristics desired and the polymers used.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have selected specific components for the hair care composition based on the teachings of Daniels, since Daniels discloses the thermodynamic properties can be controlled by altering the parameters, such as particle size and charge density of the components. One of ordinary skill would have a reasonable expectation of success since Young discloses a composition for the same purpose.

Conclusion

No claims are allowed. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa S. Mercier whose telephone number is (571) 272-9039. The examiner can normally be reached on 7:30am-4pm Mon through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on (571) 272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MSMercier

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SUPERVISORY PATENT EXAMINER
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